

AMENDED IN ASSEMBLY APRIL 12, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1626

Introduced by Assembly Member Klehs

February 22, 2005

An act to amend Section ~~1198.5~~ of the Labor Code 1088.5 of the Unemployment Insurance Code, relating to ~~personnel files~~ employment insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1626, as amended, Klehs. ~~Personnel files~~ *Employer reports.*

Existing law, with specified exceptions and pursuant to certain limitations, ~~grants every employee the right to inspect the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee. Existing law requires employers to maintain and provide access to employee records.~~

~~This bill would define "employee" to include former employees who seek to inspect personnel records during the period of any statute of limitations governing claims that may be asserted with respect to the employment relationship~~ *requires each employer, within 20 days of hiring an employee who works in the state and to whom the employer anticipates paying wages, to report specified information about the employee to the Employment Development Department. Under existing law, the department may assess a \$24 penalty against an employer who fails to timely report the requested information, absent good cause. Where the employer conspires with the employee to supply false or incomplete information to the department, or to not report the required information, the department may assess a penalty of \$490.*

This bill would require the department to assess increased penalties against employers who fail to timely report, or conspire with employees to provide false or incomplete information or to not report, the required information. In addition to the information required to be reported under existing law, the bill would require employers to report the estimated monthly earnings of each new employee. The bill would require the department, by June 30, 2006, to develop and implement a short-term amnesty program during which the required penalties would be waived for employers who previously failed to report new hires.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1088.5 of the Unemployment Insurance
2 Code is amended to read:
3 1088.5. (a) In addition to information reported in accordance
4 with Section 1088, effective July 1, 1998, each employer shall
5 file, with the department, the information provided for in
6 subdivision (b) on new employees.
7 (b) Each employer shall report the hiring of any employee who
8 works in this state and to whom the employer anticipates paying
9 wages.
10 (c) (1) This section shall not apply to any department, agency,
11 or instrumentality of the United States.
12 (2) State agency employers shall not be required to report
13 employees performing intelligence or counterintelligence
14 functions, if the head of the agency has determined that reporting
15 pursuant to this section would endanger the safety of the
16 employee or compromise an ongoing investigation or intelligence
17 mission.
18 (d) (1) Employers shall submit a report as described in
19 paragraph (4) within 20 days of hiring any employee whom the
20 employer is required to report pursuant to this section.
21 (2) Notwithstanding subdivision (a), employers transmitting
22 reports magnetically or electronically shall submit the report by
23 two monthly transmissions not less than 12 days no more than 16
24 days apart.

(3) For purposes of this section, an employer that has employees in two or more states and that transmits reports magnetically or electronically may designate one state in which the employer has employees to which the employer will transmit the report described in paragraph (4). Any employer that transmits reports pursuant to this paragraph shall notify the Secretary of Health and Human Services in writing as to which state the employer designates for the purpose of sending reports.

(4) The report shall contain the following:

(A) The name, address, ~~and~~ social security number, *and estimated monthly earnings* of the employees.

(B) The employer's name, address, state employer identification number (if one has been issued), and identifying number assigned to the employer under Section 6109 of the Internal Revenue Code of 1986.

(C) The first date the employee worked.

(5) Employers may report pursuant to this section by submitting a copy of the employee's W-4 form, a form provided by the department, or any other hiring document transmitted by first-class mail, magnetically, or electronically.

(e) For each failure to report the hiring of an employee, as required and within the time required by this section, unless the failure is due to good cause, the department ~~may~~ *shall* assess a penalty of ~~twenty-four~~ *two hundred* dollars ~~(\$24)~~ *(\$200)*, or ~~four hundred ninety five thousand~~ *dollars* ~~(\$490)~~ *(\$5,000)* if the failure is the result of conspiracy between the employer and employee not to supply the required report or to supply a false or incomplete report.

(f) Information collected pursuant to this section may be used for the following purposes:

(1) Administration of this code.

(2) Locating individuals for purposes of establishing paternity and establishing, modifying, and enforcing child support obligations.

(3) Administration of employment security and workers' compensation programs.

(4) Providing employer or employee information to the Franchise Tax Board for the purpose of tax enforcement.

(5) Verification of eligibility of applicants for, or recipients of, the public assistance programs listed in Section 1320b-7(b) of Title 42 of the United States Code.

(g) For purposes of this section, “employer” includes a labor union hiring hall.

(h) This section shall become operative on July 1, 1998.

SEC. 2. By no later than June 30, 2006, the department shall develop and implement an amnesty program of three months’ duration, during which employers who have failed to report the required information may do so without penalty. For employers who do not participate in the amnesty program and are later determined to have failed to register an employee prior to the inception of the amnesty program, the department shall assess a penalty of four hundred dollars (\$400) for each employee not registered.

~~SECTION 1. Section 1198.5 of the Labor Code is amended to read:~~

~~1198.5. (a) Every employee has the right to inspect the personnel records that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.~~

~~(b) The employer shall make the contents of those personnel records available to the employee at reasonable intervals and at reasonable times. Except as provided in paragraph (3) of subdivision (c), the employer shall not be required to make those personnel records available at a time when the employee is actually required to render service to the employer.~~

~~(c) The employer shall do one of the following:~~

~~(1) Keep a copy of each employee’s personnel records at the place where the employee reports to work.~~

~~(2) Make the employee’s personnel records available at the place where the employee reports to work within a reasonable period of time following an employee’s request.~~

~~(3) Permit the employee to inspect the personnel records at the location where the employer stores the personnel records, with no loss of compensation to the employee.~~

~~(d) The requirements of this section shall not apply to:~~

~~(1) Records relating to the investigation of a possible criminal offense.~~

~~(2) Letters of reference.~~

1 ~~(3) Ratings, reports, or records that were:~~

2 ~~(A) Obtained prior to the employee's employment.~~

3 ~~(B) Prepared by identifiable examination committee members.~~

4 ~~(C) Obtained in connection with a promotional examination.~~

5 ~~(4) Employees who are subject to the Public Safety Officers~~
6 ~~Procedural Bill of Rights, Chapter 9.7 (commencing with Section~~
7 ~~3300) of Division 4 of Title 1 of the Government Code.~~

8 ~~(5) Employees of agencies subject to the Information Practices~~
9 ~~Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4~~
10 ~~of Division 3 of the Civil Code).~~

11 ~~(e) The Labor Commissioner may adopt regulations that~~
12 ~~determine the reasonable times and reasonable intervals for the~~
13 ~~inspection of records maintained by an employer that is not a~~
14 ~~public agency.~~

15 ~~(f) If a public agency has established an independent employee~~
16 ~~relations board or commission, an employee shall first seek relief~~
17 ~~regarding any matter or dispute relating to this section from that~~
18 ~~board or commission before pursuing any available judicial~~
19 ~~remedy.~~

20 ~~(g) For purposes of this section, "employee" includes former~~
21 ~~employees during the period of any statute of limitations~~
22 ~~governing claims that may be asserted with respect to the~~
23 ~~employment relationship.~~

24 ~~(h) In enacting this section, it is the intent of the Legislature to~~
25 ~~establish minimum standards for the inspection of personnel~~
26 ~~records by employees. Nothing in this section shall be construed~~
27 ~~to prevent the establishment of additional rules for the inspection~~
28 ~~of personnel records that are established as the result of~~
29 ~~agreements between an employer and a recognized employee~~
30 ~~organization.~~